



U.S. Department of Justice

United States Attorney  
Southern District of New York

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86 Chambers Street  
New York, New York 10007

September 27, 2021

By ECF:

The Honorable Paul A. Crotty  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Re: *First Look Institute, Inc. and W. Paul Smith v. U.S. Dep't of State*,  
No. 21 Civ. 6197 (PAC)

Dear Judge Crotty:

We write on behalf of both parties in the above-referenced action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), in advance of the initial pretrial conference scheduled for 3:15 PM tomorrow, September 28, 2021. We apologize for the lateness of this letter, as we recognize that the Court's individual rules and the Court's August 27, 2021 order required submission of a case management plan two business days prior to the conference.

**Case Management Plan.** Because this is a FOIA case, the parties respectfully request that we be relieved of the obligation to provide a case management plan. FOIA cases are generally not subject to civil discovery. Instead, disputed issues will be resolved either through the parties' agreement, or by the submission of cross-motions for summary judgment on the basis of agency declarations. *Carney v. DOJ*, 19 F.3d 807, 812 (2d Cir. 1994). Accordingly, most of the fields in the proposed case management plan are not relevant to this case.

**Case update.** In addition to the information required by the Court's individual rules, which is given below, the parties provide the following information on the status of the government's efforts to process plaintiff's FOIA requests.

State has now completed searches for records responsive to all three of plaintiffs' November 13, 2020 FOIA requests, described in more detail below. The searches have yielded over 200 potentially responsive documents consisting of more than 300 pages. The parties are conferring regarding the processing rate and propose that we update the court with our respective positions on or before October 5, 2021.

In accordance with the Court's individual rules, we provide the following information.

**1. Trial counsel:**

For Plaintiffs:

For Defendant:

Andrew G. Celli, Jr.  
Debra Greenberger  
Emery Celli Brinckerhoff Abady  
Ward & Maazel LLP  
600 Fifth Avenue, 10th Floor  
New York, New York 10020  
Telephone: (212) 763-5000  
Facsimile: (212) 763-5001  
E-mail: [dgreenberger@ecbawm.com](mailto:dgreenberger@ecbawm.com)

Peter Aronoff  
Assistant United States Attorney  
U.S. Attorney's Office, Southern District of  
New York  
Telephone: (212) 637-2697  
Facsimile: (212) 637-2717  
E-mail: [peter.aronoff@usdoj.gov](mailto:peter.aronoff@usdoj.gov)

David S. Bralow  
Victoria J. Noble\*  
First Look Institute, Inc.  
114 5th Ave  
New York, NY 10011-5604  
Telephone: (917) 477-6500  
Facsimile:  
E-mail: [david.bralow@theintercept.com](mailto:david.bralow@theintercept.com);  
[victoria.noble@theintercept.com](mailto:victoria.noble@theintercept.com)

*\*appearing pro hac vice*

## 2. Brief description of the case

This is an action under the Freedom of Information Act (“FOIA”) concerning three requests concerning the Syrian civil war made by the Plaintiffs—a non-profit news organization and its Investigative Researcher—on November 13, 2020. *See* Complaint, Dkt. No. 1, ¶ 13 & Exs. A, B, C. Two of the requests (assigned tracking numbers F-2021-01122 and F-2021-01123) seek email correspondence between an individual outside the government and an employee of the State Department that meet certain criteria.<sup>1</sup> The third request (assigned tracking number F-2021-01125) seeks “reports produced by the Democracy Council sent to the State Department that make mention of ‘Syria,’” in the date range from June 1, 2014 to December 31, 2016. Compl. ¶ 13 & Ex. C. While the State Department confirmed receipt of the FOIA requests, it did not respond to any of the Requests by the statutory deadline.

## 3. Basis for subject-matter jurisdiction

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<sup>1</sup> Specifically, F-2021-01122 sought “emails sent from the email address [jprince@demcouncil.org](mailto:jprince@demcouncil.org) to State Department employee Ava Leone that make any mention of the following terms: ‘Raqqa Is Being Slaughtered Silently’; ‘RBSS’; or ‘Raqqa,’” and specified a date range from August 1, 2014 to August 31, 2016. Request number F-2021-01123 sought “emails sent from the email address [jprince@demcouncil.org](mailto:jprince@demcouncil.org) to State Department employee Ava Leone,” and specified a date range of November 1 to November 30, 2015. Compl. ¶ 13 & Exs. A, B, C.

Because this action arises under FOIA, this Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 701–706 and 28 U.S.C. §§ 1331, 2201, and 2202. Venue is proper in this district pursuant to 5 U.S.C. §§ 552(a)(4)(B) because Plaintiff First Look Institute, Inc. has its principal place of business in this district at 114 5th Avenue, New York, NY 10011 and because Plaintiff W. Paul Smith is employed by First Look Institute, Inc.

#### **4. Summary of claims and defenses to be tried**

The parties agree that the issues remaining to be resolved are (1) the adequacy of defendant's searches for responsive records, and (2) whether any withheld responsive information meets one or more FOIA exemptions. The parties anticipate that these issues will be resolved either by agreement or, if necessary, on cross-motions for summary judgment, not by trial.

The parties have agreed that, with regard to plaintiffs' third request, State need only search its Bureau of Near Eastern Affairs.

#### **5. Contemplated motions/requests**

At this time, neither side yet contemplates any motions. However, both sides may, as discussed above, move for summary judgment regarding the adequacy of State's search or any asserted exemptions.

#### **6. Trial information**

Because this is a FOIA case, a trial is unlikely. If there were a trial, it would be by the court, not by jury.

#### **7. Consent to magistrate judge for all purposes**

Both sides do not consent to proceed for all purposes before a magistrate judge.

We thank the Court for its attention to this matter.

Respectfully,

EMERY CELLI BRINCKERHOFF ABADY  
WARD & MAAZEL LLP

By: /s/ Debra Greenberger

Andrew G. Celli, Jr.  
Debra L. Greenberger  
600 Fifth Avenue, 10th Floor  
New York, New York 10020  
(212) 763-5000

FIRST LOOK INSTITUTE, INC.  
David S. Bralow

AUDREY STRAUSS  
United States Attorney for the  
Southern District of New York

By: /s/ Peter Aronoff  
PETER ARONOFF  
Assistant United States Attorney  
Telephone: (212) 637-2697  
Facsimile: (212) 637-2717  
E-mail: [peter.aronoff@usdoj.gov](mailto:peter.aronoff@usdoj.gov)

*Counsel for Defendant*

Victoria J. Noble\*  
114 5th Ave  
New York, NY 10011-5604

*Attorneys for Plaintiffs*

*\*appearing pro hac vice*